

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) P17115/1020P17115	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>August 12, 2009</u> Signature <u>/Spencer A. Bartl/</u> Typed or printed name <u>Spencer A. Bartl</u>		Application Number <u>10/728,676</u> Filed <u>12/04/2003</u> First Named Inventor <u>Anil K. Kumar</u> Art Unit <u>2446</u> Examiner <u>Scott M. Sciacca</u>	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. (See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)) <input checked="" type="checkbox"/> attorney or agent of record. <u>56,784</u> Registration number <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </div> <div style="width: 50%;"> <u>/Caroline J. Swindell/</u> Signature <u>Caroline J. Swindell</u> Typed or printed name <u>503-367-5758</u> Telephone number <u>August 12, 2009</u> Date </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".</p>			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/728,676 Confirmation No.: 9059
Applicant : Anil K. Kumar
Filed : December 4, 2003
TC/A.U. : 2446
Examiner : Scott M. Sciacca

Docket No. : P17115/1020P17115
Customer No. : 57035

Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Office Action mailed on May 12, 2009, Applicant requests a pre-appeal review conference in light of the following remarks. This request is filed concurrently with a Notice of Appeal.

REMARKS

Claims 1-22, 24-30 are pending in this application. Claims 1-22, 24-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 7,136,392 to Wentink (hereinafter “Wentink”) in view of United States Patent No. 7,301,965 to Cimini Jr. et al. (hereinafter “Cimini”) and United States Patent No. 6,577,628 to Hejza (hereinafter “Hejza”). Applicant respectfully submits that the rejection is improper. The references, alone, or in combination, fail to teach at least one element of the independent claims.

Claim 1 recites: A method comprising: in response, at least in part, to a request for a service from a system, determining a quality of service to assign to an application to be executed by the system to provide the service, the quality of service based, at least in part, on one or more service characteristics of the application; mapping said one or more service characteristics to a class of service database; allocating one or more resources to the application, the one or more resources being based, at least in part, on the quality of service and a media access control service data unit (MSDU) size; determining a size of packets to be used for transmitting data associated with the service based on said quality of service; and servicing the application in a bearer plane.

Specifically, the references, alone or in combination, fail to teach or fairly suggest, at least, servicing the application in a bearer plane. Servicing an application in a bearer plane may include, for example, assigning a QoS to an application, or allocating resources independently of signal processing and call control, in the same plane as data transmission. See, Specification, paragraph 0032. Wentink is relied on to teach this element of claim 1.

The Action asserts that Wentink teaches servicing an application in a bearer plan, allegedly because Wentink teaches nodes that communicate via a single shared communication channel, where content is transferred via the channel and QoS policies are set via QoS Parameter Set elements that are transmitted via beacon frames. However, Wentink does not teach servicing an application in a bearer plane.

Instead, Wentink teaches servicing an application in a control plane. Wentink accepts QoS parameters from a user via an interface to a media control module. Wentink, col. 5, lines 43, 60. The QoS parameters are directed to an NDIS driver, which also interfaces with the media control module. Wentink, col. 5, lines 41-42, 61. Then, data message units are tagged to distinguish QoS from non-QoS sessions within the NDIS driver, and the tagged message units are transferred to the media control module. Wentink, col. 5, line 65 to col. 6, line 2.

Further, the QoS Parameter Set element cited in the Action is used to provide information needed by the stations for proper operation of the QoS facility during each contention period, including window values, transmission opportunities, and interframe space intervals. Wentink, col. 8, lines 16-20. That the QoS Parameter Set elements are transmitted to access points via beacon frames is irrelevant to servicing an application at the bearer plane. Wentink performs application servicing at the control plane level.

Therefore, Wentink fails to teach or suggest at least this element of claim 1. Cimini and Hejza, alone or in combination with Wentink, fail to overcome the deficiencies of Wentink.

Because the references, alone or in combination, fail to teach or fairly suggest, at least, servicing the application in a bearer plane, the Action fails to establish a prima facie case of obviousness regarding claim 1. Reconsideration and withdrawal of the rejection is respectfully requested.

Independent claims 10, 17, and 24 recite similar elements as those discussed above regarding claim 1 and are allowable for at least the reasons provided for claim 1.

Claims 2-9, 11-16, 18-22, and 25-30 depend from allowable independent claims, and are allowable at least for being dependent from allowable claims.

Conclusion

It is believed that claims 1-22, 24-30 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicant does not otherwise concede, however, the correctness of the rejection set forth in the Office Action with respect to any of the features of the independent claims and dependent claims. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the claims from the cited reference, based on additional features contained in the independent claims or dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned at 724-933-9344 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

KACVINSKY LLC

/Caroline J. Swindell/

Caroline J. Swindell, Reg. No. 56,784
Under 37 CFR 1.34(a)

Dated: August 12, 2009

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